86 - 1173

No.

FILED
JAN 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

BASIL CHRIS ELIAS, Petitioner,

vs.

ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

WILLIAM J. HARTE
111 West Washington Street
Suite 1100
Chicago, Illinois 60602
(312) 726-5015
Attorney for Petitioner

Of Counsel:
JOHN B. AUSTIN

Photex — 444 North Wabash Avenue — Chicago 60611 — 321-0223

QUESTION PRESENTED FOR REVIEW

Whether it is a denial of Due Process to impose a suspension of three years on an attorney on the basis of documents extracted by the reviewing authority from a large number of exhibits admitted at the hearing when:

> Other than that contained in a specific Count of the Complaint and admitted by the attorney, there is no mention in the Complaint of the kind of ethics violation the extracted documents were held to have shown,
>
> and
>
> The prosecuting authority never at any time raised or discussed any such incidents other than that of the specific Count of the Complaint.

TABLE OF CONTENTS

Page

Questions Presented For Review i

Table of Authorities iv

Citation to the Opinion of the Court Below. 1

Jurisdiction. 3

Constitutional Provision Involved 4

State Rules Involved. 4

Statement of the Case 6

Argument 20

Introduction 20

I. PETITIONER WAS NOT PROVIDED WITH NOTICE SUFFICIENT TO ENABLE HIM TO PREPARE HIS DEFENSE. 22

II. THE UNTESTED DOCUMENTS DO NOT IN THEMSELVES CONSTITUTE EVIDENCE RELIABLE ENOUGH TO SUPPORT THE GRAVE CONSEQUENCES OF ATTORNEY DISCIPLINE. 29

Conclusion. 34

App.

Appendix A Suspension Order of the Illinois Supreme Court. . . . 1

Appendix B Illinois Attorney Registration and Disciplinary Commission Review Board Report and Recommendation. 16

Appendix C Illinois Attorney Registration and Disciplinary Commission Hearing Board Report and Recommendation. 67

Appendix D Denial of Petition for Rehearing, Illinois Supreme Court 76

TABLE OF AUTHORITIES

Norwood v. Harrison, 413 U.S. 455 (1973). 25

In re Ruffalo, 390 U.S. 544 (1968). 27, 31

Mathews v. Eldridge, 424 U.S. 319 (1976). 29

Konigsberg v. State Bar of California, 353 U.S. 252 (1957). 31

Ex Parte Wall, 107 U.S. 265 (1893) . . .31

Spevack v. Klein, 385 U.S. 511 (1967). .31

No.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1986

BASIL CHRIS ELIAS, Petitioner,

vs.

ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Attorney-petitioner, BASIL CHRIS ELIAS ("petitioner"), respectfully requests that a writ of certiorari issue to review the opinion and order of the Supreme Court of Illinois entered October 1, 1986, by which that court suspended petitioner from the practice of law in the State of Illinois for a period of three years.

OPINION BELOW

A Hearing Board of the Attorney Registration and Disciplinary Commission of

the Supreme Court of Illinois ("the Commission") heard evidence concerning a four-count Complaint filed by the Commission's Administrator ("the Administrator") of the Commission and recommended that petitioner be privately reprimanded, the least severe possible discipline with no time lost from the practice, and admonished to comply with the disciplinary rule requiring attorneys to maintain a clients' trust account. (Appendix C). The Commission's Review Board, citing certain documents among thousands admitted into evidence at the hearing before the Commission's Hearing Board but never raised or discussed either at the hearing or on review by the Administrator, found instances of conversion of client settlement proceeds as well as of fraud and deceit and recommended that

petitioner be disbarred, the most severe discipline possible. (Appendix B).

The Illinois Supreme Court rejected petitioner's due process objection to the Review Board's consideration of the evidence not specifically advanced by the Administrator either at the Hearing Panel level or before the Review Board, upheld the Review Board's findings of conversion and fraud based upon this evidence, and ordered that petitioner be suspended from the practice of law for three years. (Appendix A, _____Ill.2d __ ____,_____ N.E.2d _____ (1986)).

JURISDICTION

The Suspension Order of the Illinois Supreme Court was entered October 1, 1986. A timely-filed Petition for Rehearing was denied December 1, 1986. This Petition for

Writ of Certiorari was filed within ninety days of the denial of rehearing.

Jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

AMENDMENT XIV TO THE CONSTITUTION OF THE UNITED STATES:

Section 1.

> ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATE RULES INVOLVED

DR 1-102: Misconduct

(a) A lawyer shall not:

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

R. 1-102(a)(4) 87 Ill.2d 509

Rule 9-102. Preserving Identity of Funds and Property of a Client

(a) All funds of clients paid to a lawyer or law firm, including funds belonging in part to a client and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more separate identifiable trust accounts in a bank or savings and loan association maintained in the State in which the law office is situated.

(b) The portion of funds deposited in accounts described in Rule 9-102(a) belonging to the lawyer or law firm may be withdrawn when due, after reasonable notice to the client of an intention to withdraw, unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) A lawyer shall

(1) promptly notify a client of the receipt of his funds, securities, or other properties;

(2) identify and label securities and properties of a client promptly upon receipt

> and place them in a safe deposit box or other place of safekeeping as soon as practicable;
>
> (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them; and
>
> (4) promptly pay or deliver to the client, as requested by the client, the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

R. 9-102(a)(b)(c), 94 Ill.2d LXIX-LXX

STATEMENT OF THE CASE

Petitioner is a sole practitioner concentrating on personal injury claims on behalf of low-income persons. The disciplinary proceedings at issue arose from petitioner's system of disbursing clients' portions of insurance settlements.

Between 1977 and 1982, petitioner

maintained several bank accounts in his and others' names. Upon receipt of an insurance company settlement draft, petitioner would call in the client, present him with a settlement accounting, acquire his endorsement of the settlement draft and give the client a cash or check for his share of the settlement proceeds. The client-disbursement checks were often post-dated to allow time for collection of the settlement draft. The petitioner would thereafter deposit the settlement draft in one of the accounts. Considering that he had purchased the client's interest in the settlement draft, petitioner felt free to write personal and business checks upon the accounts.

The Administrator of the Illinois Attorney Registration and Disciplinary Commission ("ARDC") filed a four-count Complaint

against petitioner. The relevant aspects of the Complaints and of petitioner's answer may be summarized as follows.

Count One alleged:

> Failure to deposit clients' settlement proceeds into a trust account established for that purpose;
>
> Commingling and conversion of client funds by deposits into one of five nontrust accounts by
>
> > drawing on those deposits to pay personal and business expenses and
> >
> > permitting these accounts consistently to be overdrawn.

Immediately after these general allegations are the words: "To wit in the following particulars" after which five accounts are named, into which settlement draft proceeds were deposited, and upon which petitioner drew personal and business checks. These accounts were overdrawn on occasion. The

Count charges that "by reason of the manner in which the above mentioned bank accounts have been operated", petitioner was guilty, inter alia, of commingling and conversion as well as of fraud, deceit and misrepresentation.

Petitioner admitted all allegations of the "particulars," but denied that he was guilty of the proscribed conduct these particulars exemplified.

Count Two alleged facts concerning the maintenance of a particular account into which petitioner deposited insurance settlement drafts upon which petitioner drew personal and business checks and which was overdrawn on occasion. The Count charges that "by reason of the conduct outlined above" petitioner was guilty of failure to preserve the identity of client funds;

commingling and conversion and fraud, deceit and misrepresentation.

Petitioner admitted the maintenance of the account, the deposit into it of settlement drafts and the overdrafts, but denied that he was guilty of the proscribed conduct these particulars exemplified.

Count Three alleged failure to preserve the identity of client funds; commingling and conversion and fraud, deceit and misrepresentation in that, upon presentation, client Mary Rooney's settlement disbursement check was dishonored because of insufficient funds in the petitioner's account upon which it was drawn.

Petitioner admitted all of the factual allegations, but denied that they constituted the proscribed conduct charged.

Count Four alleged failure to preserve

the identity of client funds' commingling and conversion and fraud, deceit and misrepresentation in that at a time before client Fred Roll's presentment of his settlement check, petitioner's account upon which it was drawn had been overdrawn. There is no allegation that Roll's check was dishonored.

Petitioner admitted the factual allegations, but denied that they constituted the proscribed conduct charged.

It should be noted that the complaint alleged only one instance in which a client's settlement proceeds check had been dishonored upon presentment.

The Administrator presented, and the Hearing Board admitted, over one thousand exhibits, mostly bank records - the petitioner having argued that they were immaterial and irrelevant to the case as defined by

the Complaint and the factual admissions of his Answer. The Administrator responded that their admission was necessary to demonstrate the scope of petitioner's aggravated and long-standing ethical violations. In any case, no mention was made at the hearing of any client settlement disbursement check dishonorings other than that of Mary Rooney, or of any documents among these exhibits which might concern such additional dishonorings.

After two days of testimony, the Hearing Panel concluded that petitioner's settlement disbursement procedure risked a technical breach of ethics any time an overdraft occurred in an account upon which was drawn an outstanding client's disbursement check. But the Panel found that the Administrator had alleged and proved only one

instance, Count Three, during petitioner's twenty-six years of practice when a client's check had been dishonored (an actual breach of ethics which had been made good promptly and fairly) and one instance, Count Four, when petitioner was guilty of the technical breach of ethics of a prior overdraft on the account which did not result in the dishonoring of the client's check. The Hearing Panel recommended that petitioner be privately reprimanded and admonished to comply strictly with the applicable rules in the future.

In the exceptions to the Hearing Board's recommendations which he filed with the ARDC Review Board, the Administrator contended that the voluminous evidence demonstrated the error of the Hearing Board's finding of only two instances of misconduct,

and argued that the Hearing Board failed to consider a number of acts of misconduct proven at the hearing:

> Consistent depositing of client settlement proceeds into an unsegregated bank account;
>
> Allowing bank accounts into which client funds were deposited to be overdrawn on over 800 occasions;
>
> Failing to preserve the identity of funds deposited in bank accounts;
>
> Regular commingling and conversion of client monies.

The Administrator again did not raise in general or cite in particular any additional examples of clients being denied settlement proceeds upon presentment of their disbursement checks.

In its discussion of the evidence the Review Board relied heavily upon its own careful examination of the exhibits admitted by the Hearing Board. Despite the fact that

nowhere except in Count III did the Complaint allege a dishonored client check as the basis for charges of unethical conduct, and despite the fact that never in the hearing, briefs, or argument before either the Hearing Panel or the Review Board were any dishonored checks other than that specifically alleged in Count III raised by the Administrator or anyone else, the Review Board found "numerous" other such incidents and based its recommendation of disbarment largely upon them. The Review Board stated that the [newly-examined] records

> directly contradict the position of Respondent that in his 26 years of practice only one client, Mary K. Rooney, was disadvantaged by his methods. Instead there are numerous instances where clients' distribution checks were presented twice in order to effectuate a disbursement.*

---

*What petitioner actually stated in his Memorandum to the Review Board was that

The Review Board also found that by depositing settlement checks into accounts other than the ones upon which the client's check was written and by representing to clients that funds would be available on the date of the check in order to induce endorsement of the settlement draft, petitioner committed fraud on those clients whose checks did not clear when presented the first time.

Such findings, based upon documents first extracted from a large number of exhibits, and when petitioner no longer had any opportunity to respond to them,

---

(footnote continued)

there was no evidence that in 26 years of practice any client failed to receive settlement proceeds and that the Hearing Board found impropriety only in two isolated instances.

unquestionably contributed heavily to the Review Board's escalation of disciplinary recommendation from the Hearing Panel's reprimand and admonishment to the ultimate sanction, disbarment.

In his briefs submitted to the Illinois Supreme Court in support of his exceptions to the Review Board's Report and Recommendations, petitioner argued, inter alia, that it was a denial of due process for the Review Board to base its conclusions of law upon factual findings concerning which petitioner never had a chance to present a defense because those facts were neither alleged in the Complaint nor ever discussed, let alone, proven, before the Hearing Panel.

The Supreme Court held that the bank account documents were admissible to prove

the ultimate issues of the case as showing, for example, that it was more probable than not that the several bank accounts were not client trust accounts and, further, that petitioner converted clients' funds because they "reveal the many times [petitioner's] accounts, into which he deposited clients' settlement checks, showed negative balances." The court also ruled that the documents were not prejudicial to petitioner.

Regarding petitioner's due process argument, the court ruled that the matters initially sifted out of the documentary evidence by the Review Board were not new charges but "illustrative of [petitioner's] pattern and practice of commingling and conversion as charged in Counts I and II of the Administrator's complaint." Consequently,

the court held that the due process requirement of notice sufficent to permit petitioner to prepare his defense had been satisfied in this case. The court remarked that "Any additional specificity of the charges beyond that required by due process could have been secured by respondent through a request for a bill of particulars."

The court also affirmed the Review Board's finding of fraud and deceit which the Board had grounded largely on its de novo consideration of selected documents, and, stating, inter alia, that "certain of respondent's clients were harmed at the time they presented his check and found it dishonored...", the Illinois Supreme Court suspended petitioner from the practice of law for three years.

ARGUMENT

Introduction

In the Illinois Supreme Court's view, the fairness of one's opportunity to respond to charges depends not upon the practical realities of a given case but upon a technicality, namely, as long as the matter provoking the due process complaint can be construed as an "illustration" of the charges levelled by the complaint, a due process petitioner is automaticaly held to have had sufficient notice to prepare his case. This case, with its amorphous pile of documents which, in regard to matters at issue in the present Petition, was entirely neglected before and during the hearing furnishes a dramatic example of the danger in adopting such a technical formula.

As an initial matter, let no one be

lulled by the term "illustration." The acceptance of numerous incidents of the dishonoring of client checks as fairly established was clearly a substantial basis for both the Review Board's and the Supreme Court's findings of actual conversion as well as fraud and deceit. Indeed, without the consideration of these incidents, which the Administrator had neither raised in his Complaint nor mentioned at the hearing, the Hearing Panel found only one example of client check's dishonoring and recommended only reprimand and admonishment. Whether labelled the docile-seeming "illustrations" or the more august "charges," the wound inflicted by these hidden thorns was great.

The Illinois Supreme Court's solution of the due process issue in this case by saying that the Administration's Complaint

sufficiently put petitioner on notice of the nature of the charges against him so that he could prepare his defense was clear error of grave constitutional significance. It imposed, after the fact, a burden upon petitioner of which he was completely unaware.

I.

PETITIONER WAS NOT PROVIDED WITH NOTICE SUFFICIENT TO ENABLE HIM TO PREPARE HIS DEFENSE.

In terms of the Complaint, petitioner was not forewarned that he would have to defend against any charges of conversion based upon client check dishonorings other than the one specifically charged in Count Three; nothing in Counts One or Two mentions such incidents even generally. While petitioner realizes that this Court will not enmesh itself in the Review Board's and the Illinois Supreme Court's ruling that the Complaint

properly prepared the way for admission of the documents, it nevertheless seems relevant to the due process notice requirement that not only were the specific dishonorings buried among the exhibits never alleged or discussed at the hearing, the Administrator at no time mentioned even the general possibility that such dishonorings might exist. The context of petitioner's practice and the fact that it was never claimed that a single client failed to receive his settlement disbursement only serve to confirm the inevitability that, given the Complaint with its complete lack of reference to client check dishonorings other than that of the separate Count Three, petitioner would prepare his defense as he did. The mere admission of a large number of exhibits did not cure the defect. The result of the

Review Board's and Illinois Supreme Court's consideration of the untested incidents of client check dishonorings is that petitioner prepared and presented his defense in complete lack of awareness of a dilemma he was later held to have ignored at his peril.

The effect of the ruling below is the imposition, after the fact, upon petitioner of the burden of refuting each and every one of the documents among the mass of exhibits which might prove damaging to him at any stage of the disciplinary process and regardless of whether the Administrator discussed them or not. Petitioner had no notice of that burden, and, under the circumstances, the Illinios Supreme Court's blithe assertion that petitioner could have requested a bill of particulars is merely an elaboration of an illusion: one cannot

sharpen the focus of a picture one cannot see.

Petitioner submits that the Administrator's introduction into evidence of documents which he never discussed in effect unconstitutionally shifted the burden of going forward, if not the burden of proof, concerning the "numerous" check dishonorings at issue here.

This Court has stated the obvious, "No presumptions flow from mere allegations; no one can be required, consistent with due process, to prove the absence of violation of law." Norwood v. Harrison, 413 U.S. 455, 471 (1973). Petitioner, of course, had the burden of going forward with evidence to defend against ethics violations about which the Administrator provided sufficient evidence to satisfy the Administrator's initial

burden. And the difference between a "mere allegation," which cannot satisfy that initial burden and proof which does satisfy it may be a difficult one to define in the abstract. But petitioner submits that in order to shift to an attorney the burden of going forward with evidence to defend against a claim which may result in the deprivation of his livelihood, he must be given at least reasonably clear notice of what he must refute. Petitioner had no such notice in this case. Indeed, the posture of the Complaint, the Answer, and the Administrator's stated reasons in support of his motion to admit the mass of documents quite naturally would have led petitioner to an exclusive concentration on the specific ethics violations which the Complaint and Answer focused upon.

In In re Ruffalo, 390 U.S. 544 (1968), this Court reversed the disbarment of an attorney from the Federal bar because 1) the charge upon which the Ohio Supreme Court and, consequently, the Federal Court of Appeals had relied was added only after the attorney and his agent had testified, and 2) no additional evidence concerning it was taken. Justice Douglas stated:

> In the present case petitioner had no notice that his employment of Orlando would be considered a disbarment offense until after both he and Orlando had testified at length on all the material facts pertaining to this phase of the case...
>
> These are adversary proceedings of a quasi-criminal nature. Cf. In re Gault, 387 U.S. 1, 33. The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh.

> How the charge would have been met had it been originally included in those levelled against petitioner by the Ohio Board of Commissioners on Grievances and Discipline no one knows.
>
> 390 U.S. at 550-51. (Emphasis in original).

The Complaint against the instant petitioner, with its one allegation of the dishonoring of a single client's check, an allegation highlighted in a separate Count and not as an "illustration" of general wrongdoing, in reality gave him no notice of the charges which ultimately contributed so heavily to his three-year suspension. No subsequent filings or discussion did anything more than confirm the focus of the Complaint. Thus, the proceedings below failed to honor the basic notice demanded by Ruffalo.

II.

THE UNTESTED DOCUMENTS DO NOT IN THEMSELVES CONSTITUTE EVIDENCE RELIABLE ENOUGH TO SUPPORT THE GRAVE CONSEQUENCES OF ATTORNEY DISCIPLINE.

Finally, petitioner submits that in respect to an issue as basic as the deprivation of a person's livelihood, the evidence of the "numerous" client check dishonorings, as it came before the Review Board untested by any adversarial probing, was in any case insufficient to satisfy the burden of proof due process required in such important proceedings.

In Mathews v. Eldridge, 424 U.S. 319 (1976), Justice Powell, writing for the majority stated the broad principle that: "Due Process is flexible and calls for such procedural protections as a particular situation demands." He then elaborated this

principle by saying: "[R]esolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected." Justice Powell finally focused the balancing of these interests on an analysis of "three distinct factors":

> First, the private interest affected by official action; second, the risk of erroneous deprivation of such interests through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; finally, the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail.

Mathews, supra, 454 U.S. at 334-335. Applying these standards to the present case:

A. The gravity of the interests derived from a law license has been heeded by this Court in several ways. (See Konigsberg v. State Bar of California, 353 U.S. 252, 257-58 (1957) (attending to the grave consequences of denying admission to the bar); Ex Parte Wall, 107 U.S. 265, 289 (1893) (stating that "an attorney's calling or profession is his property, within the true sense and meaning of the Constitution"); In re Ruffalo, 390 U.S. 544, 550, 551 (1968) (ruling that the deprivation of a lawyer's license "is a punishment or penalty imposed on the lawyer" by way of "adversarial proceedings of a quasi-criminal nature"); Spevack v. Klein, 385 U.S. 511, 514-16 (1967) (holding that the threat of disbarment is sufficiently powerful to confer upon the accused attorney his Fourteenth

Amendment right to remain silent.)

B. The discussion above demonstrates the magnitude of the risk that deficient measures of a party's satisfaction of his burden of proof can inflict upon his opposition. While Mathews speaks of testing the due process of "procedures," its standards can be no less applicable even were the measuring of the sufficiency of a burden of proof to be considered wholly substantive.

C. The Commission has no legitimate interest in establishing a loose and deficient standard of proof. To require the Administrator to take the trouble that the Review Board ultimately did when it isolated specific documents from an amorphous mass of them inflicts no undue fiscal or administrative burden; it merely requires him to prepare his case properly.

Our adversary system is founded upon the notion that a satisfactory illumination of the truth may require light from all interested and competing parties. Documents do not necessarily tell the story apparently written on their face.* In a matter as serious as attorney discipline, this truth should define the burden of proof at least to the extent of holding as unsatisfactory to fulfill it the mere introduction of such documents as those at issue under

---

*After the issuance of the Review Board's Report and Recommendations, petitioner instituted an investigatin of the claims newly raised by the Review Board. In an affidavit submitted to the Illinois Supreme Court, petitioner indicates, for example, that some of the "numerous client checks may have been dishonored because of improper endorsements rather than insufficient funds." Such examples are unnecessary to this Petition, however, since it is the lack of petitioner's opportunity to probe such possibilities regarding these checks

circumstances which denied the accused attorney a chance to present perhaps a more accurate account of their history.

CONCLUSION

The manner in which the Administrator presented this case - in the Complaint, the Memorandum in which he argued for admission of the large number of documents surrounding the ones at issue in this Petition, and his prosecution of the case at the hearing - gave petitioner no notice of the documents which proved so damaging to him when the Review Board on its own initiative found them to have established facts after the petitioner had any chance to refute them.

(footnote continued)

which makes their mere introduction into evidence an insufficent fulfillment of the Administrator's burden of proof.

Petitioner submits that the use of these documents violated petitioner's Due Process rights in that he had no opportunity to respond to them; unbeknownst to him they unfairly shifted the burden of going forward to him; and they were insufficient in any case to satisfy the Administrator's burden of proof of such matters.

Respectfully submitted,

WILLIAM J. HARTE
William J. Harte, Ltd.
111 West Washington Street
Suite 1100
Chicago, IL 60602
(312) 726-5015

Attorney for Petitioner

Of Counsel:
JOHN B. AUSTIN

APPENDIX A

Docket No. 63238—Agenda 15—May 1986.
In re BASIL CHRIS ELIAS, Attorney, Respondent.

JUSTICE MORAN delivered the opinion of the court:

On April 17, 1984, the Administrator of the Attorney Registration and Disciplinary Commission filed a four-count complaint against respondent, Basil Chris Elias.

Count I of the complaint alleged that respondent failed to deposit clients' settlement proceeds into a trust account established for that purpose. It also alleged that respondent commingled and converted funds properly belonging to his clients by depositing these funds into one of five nontrust accounts; by drawing on the funds so deposited to pay personal and business expenses; and by permitting these accounts to be overdrawn on a routine basis. Each of the foregoing allegations was cited as a violation of Disciplinary Rules 9—102(a) and (b) of the Code of Professional Responsibility (94 Ill. 2d Rules 9—102(a), (b)). Count I further charged respondent with dishonesty, fraud, deceit, and misrepresentation in connection with his use of clients' funds deposited in these accounts in violation of Disciplinary Rule 1—102(a)(4) (87 Ill. 2d R. 1—102(a)(4)). Count II made the same allegations with respect to a bank account opened and controlled by respondent but established and maintained in the name of an attorney associated with his practice. Thus, under counts I and II, respondent was charged with commingling and converting funds with regard to a total of six different accounts.

Counts III and IV related to specific clients. Count III alleged commingling and conversion of funds belonging to Mary K. Rooney in violation of Rules 9—102(a) and (b). It also charged that respondent failed to maintain records, render an accounting, and distribute promptly the proceeds of the settlement negotiated on Rooney's behalf in violation of

subsection (c) of Rule 9—102 (94 Ill. 2d R. 9—102(c)). Additionally, count III charged dishonesty, fraud, deceit, and misrepresentation in distributing to Rooney her share of the negotiated settlement. Count IV realleged the foregoing charges with respect to respondent's client Fred Roll.

Respondent filed an answer on July 24, 1984, and an amended answer on October 30, 1984. His amended answer admitted the factual allegations contained in the complaint but denied that these facts constituted commingling or conversion of clients' funds. He further denied engaging in any conduct which could be deemed fraudulent or deceitful.

This matter came before the Hearing Board on January 28 and April 11, 1985. The Administrator introduced numerous exhibits, over respondent's objection, purporting to detail respondent's disposition of funds belonging to clients which, according to the Administrator, amounted to commingling, conversion, fraud, and deceit as charged in the complaint. Respondent testified before the Board, denying all allegations of wrongdoing.

The facts are not in dispute. Respondent is a sole practitioner concentrating his practice in the area of personal injury. Between 1977 and 1982, respondent opened and maintained six bank accounts. These accounts bore names as follows: Basil C. Elias Attorney at Law Clients Fund Account (Heritage Bank of Oak Lawn); Basil C. Elias Attorney at Law Account (First State Bank of Alsip); Kenneth R. LeVey and Basil C. Elias Attorney at Law Account (LeVey was an associate of respondent); Geraldine Keim Clients Fund Account (Keim was respondent's secretary-bookkeeper during this time not an attorney); Joseph N. Lascaro Attorney at Law Account (Lascaro was an associate of respondent); and Prairie States Petroleum Company, Inc. Account (respondent was president of Prairie States during this period). When respondent received a check in settlement of a client's personal injury claim, it was deposited into one of these six accounts. Respondent then issued a check to the client rep-

resenting the client's share of the settlement check. Sometimes respondent's check was post-dated. On other occasions, respondent's check bore the date on which it was given to the client.

The check given the client was drawn on one of the above named accounts but not necessarily on the account into which the settlement check had been deposited. On at least eight occasions, respondent's check was dishonored due to insufficient funds when presented for payment. One of these instances involved Mary K. Rooney, the subject of count III of the complaint. Rooney received a post-dated check and held the check until the date indicated, at which time she deposited it in her checking account. Respondent's check was dishonored, causing several of Rooney's checks to be dishonored. Several days later, Rooney received a cash payment along with an additional $40.

The record further reveals at least five other occasions on which respondent's checks were dishonored when presented. The specific reason for the dishonor of these checks does not appear in the record.

The record indicates that most of these checks were paid upon re-presentment, although two of the checks were dishonored on second presentment. The record does not show how respondent settled with the clients involved in these two cases.

The record also reveals that respondent disbursed funds from all six accounts in payment of personal and business expenses. Illustrative of disbursements for personal expenses are checks issued to gambling casinos in Nevada and New Jersey in various amounts ranging from $7,000 to $50,000. Other disbursements for personal expenses include checks issued to respondent and members of his family and checks drawn to cash. There were also disbursements for business expenses such as payments to Commonwealth Edison, Illinois Bell Telephone, People's Gas, the clerk of the circuit court of Cook County, and the post office. Other

checks were issued to Prairie States Petroleum Company.

The record further reveals that large sums of money were deposited into these accounts. For example, during 1984, the bank statements for one of these accounts, the Basil C. Elias Attorney at Law Clients Fund Account, showed the total deposits for the year to be in excess of $3 million.

The Hearing Board issued its report and recommendation on January 24, 1986. It found that respondent maintained several different bank accounts in various names; that respondent deposited checks received by him in settlement of his clients' claims into these accounts; that he disbursed funds from these accounts for personal purposes; and that these accounts were overdrawn on occasion. The Board further found that respondent's check to client Rooney had been dishonored due to insufficient funds but had been replaced with cash. It also noted that the account on which respondent's check to client Roll had been issued was overdrawn prior to presentment.

The Hearing Board concluded that "[t]echnically, there would be a breach of ethics any time the balance in [r]espondent's bank account or accounts fell below the sum of all outstanding checks to clients." Referring specifically to count III involving Rooney and count IV involving Roll, it found that respondent failed to preserve the identity of their funds as required by Rule 9—102. The Board recommended that respondent be reprimanded and admonished to adhere strictly to the requirements of Rule 9—102 in his future transactions with clients.

The Administrator filed exceptions before the Review Board on January 27, 1986. On February 3, 1986, this court ordered that the Board expedite review. Thereafter, on March 7, 1986, the Review Board filed its report and recommendation.

This Board found that respondent had failed to maintain a clients' trust account for deposit of settlement proceeds

prior to distribution to each client of his portion of the settlement as required by Rule 9—102(a). It found that these proceeds were deposited into accounts controlled by respondent which were used, in part, for his personal activities and business enterprises. The Board concluded that respondent had commingled clients' funds.

The Board also found, in its review of the documentary evidence, several instances in which checks given to clients by respondent had been dishonored for insufficient funds, requiring re-presentment or the issuance of a replacement check. It concluded that conversion had occurred in each of these cases. It also concluded that respondent's conduct in handling his clients' funds was fraudulent and deceitful in violation of Rule 1—102(a)(4).

The Review Board reversed the recommendation of the Hearing Board, recommending instead that respondent be disbarred. Respondent has filed exceptions to the report and recommendation of the Review Board in this court as provided by Supreme Court Rule 753(e)(5) (94 Ill. 2d R. 753(e)(5)).

Respondent's first exception is substantive. He contends that the Review Board erred in concluding that he violated Rule 9—102(a) because the funds in his possession were not funds belonging to his clients within the meaning of the rule and, therefore, the Board erred in concluding that he commingled and converted clients' funds. In the alternative, respondent claims error in that the Administrator failed to prove these allegations by clear and convincing evidence as required by our Rule 753(c)(6) (94 Ill. 2d R. 753(c)(6)).

Respondent also raises two procedural exceptions regarding his alleged violation of Rule 9—102(a). He maintains that the Hearing Board erred in admitting documentary evidence substantiating various transactions occurring in his bank accounts since he had admitted, in his amended answer, the factual allegations supported by these documents. He further contends that he was denied due process when

the Review Board scrutinized the documentary evidence, uncovered a number of instances of dishonored checks issued to clients, and then proceeded to base its recommendation of disbarment on these incidents even though they were not specifically charged in the Administrator's complaint.

Respondent also raises exceptions to the conclusion of the Review Board that his pattern and practice of depositing and disbursing clients' funds constituted fraud and deceit under Rule 1—102(a)(4). He argues, first, that he did not violate the rule because all clients received their agreed-upon settlements and, hence, sustained no injury as a result of his conduct. Alternatively, he argues that the Administrator failed to prove this allegation by clear and convincing evidence.

We first address respondent's assertion that he did not violate Rule 9—102(a) because the settlement proceeds he allegedly failed to segregate in a clients' trust account were not, in fact, funds belonging to clients.

Respondent, upon receiving a check in settlement of a client's claim, routinely issued either a current or post-dated check to the client representing the client's share of the settlement check. As a result of this transaction, respondent argues that the settlement check ceased to represent funds belonging to the client within the meaning of Rule 9—102(a) at the moment he gave his check in "full payment" of the client's share of the check. According to respondent, physical receipt by the client of respondent's check extinguished all interests of the client in the settlement check. Because the client no longer had an interest in the check, respondent contends that he did not hold funds belonging, in whole or in part, to the client. Since he did not hold funds belonging to the client, respondent concludes that he was not required by Rule 9—102(a) to maintain a separate clients' trust account. Under these circumstances, he contends that Rule 9—102(a) does not apply to him.

Respondent also uses this theory to rebut the Adminis-

BEST AV

trator's charges of commingling and conversion. As noted, respondent argues that he ceased to be in possession of a client's funds at the moment he delivered his check to the client in "full payment" of the latter's interest in the settlement check. Where an attorney is not in possession of property belonging to a client, there is nothing which can be commingled or converted. Thus, respondent concludes that, as a matter of law, he cannot have commingled or converted clients' funds.

The Administrator disputes this theory. He argues that under Rule 9—102(a) all settlement checks issued to or on behalf of an attorney's client are *per se* funds belonging, in whole or in part, to the client. Therefore, the rule mandates that all settlement checks be deposited into a separate, identified clients' trust account regardless of the time or manner of payment from attorney to client. According to the Administrator, Rule 9—102(a) is violated where, as here, an attorney receives funds on behalf of a client but fails to maintain a clients' trust account. The Administrator also argues that respondent has commingled and converted clients' funds where, as here, settlement checks, the proceeds of which belong at least in part to clients, were deposited into non-trust accounts regularly used to pay respondent's personal and business expenses and which were overdrawn on a number of occasions.

The plain language of Rule 9—102(a) is dispositive of respondent's first exception. Rule 9—102(a) provides:

> "All funds of clients paid to a lawyer or law firm, including funds belonging in part to a client and *in part presently or potentially to the lawyer or law firm, shall be deposited* in one or more separate identifiable trust accounts in a bank or savings and loan association maintained in the State in which the law office is situated." (Emphasis added.) 94 Ill. 2d R. 9—102(a).

It is manifest that this provision is mandatory, admitting of no exceptions for any reason. Repeatedly, this court has held that the foregoing provision embodies an

AILABLE COPY

unambiguous requirement that an attorney must establish and maintain a separate, identifiable trust account into which any and all funds belonging, in whole or in part, to clients are to be deposited regardless of the manner in which an attorney chooses to handle final disbursement of these funds. *In re Cutrone* (1986), 112 Ill. 2d 261, 268; *In re Enstrom* (1984), 104 Ill. 2d 410, 417-18; *In re Cohen* (1983), 98 Ill. 2d 133, 139.

There is no question that the settlement checks received by respondent belonged in part to his clients. Similarly, there is no question that respondent failed to establish and maintain a clients' trust account for these funds, thus violating both the letter and spirit of Rule 9—102(a). Further, respondent's admitted pattern and practice of depositing settlement proceeds into one of several non-trust accounts from which he would pay personal and business expenses clearly constitutes commingling of funds. Finally, as respondent also admits, while current and post-dated checks drawn on these accounts and issued to clients remained outstanding, these accounts would become overdrawn. On each such occasion, clients' funds were converted.

This court has observed on many occasions that failure to abide by the express, mandatory directive of Rule 9—102(a) often leads to commingling and conversion. (*In re Cohen* (1983), 98 Ill. 2d 133, 139; *In re Grant* (1982), 89 Ill. 2d 247, 253, *cert. denied* (1982), 459 U.S. 838, 74 L. Ed. 2d 80, 103 S. Ct. 84.) Strict compliance avoids this outcome and insures the safety and integrity of clients' funds while in the possession of an attorney. We therefore affirm the decision of the Review Board that the Administrator proved by clear and convincing evidence that respondent failed to maintain a clients' trust account in violation of Rule 9—102(a); commingled client funds with his own; and converted client funds to his own uses as alleged in each count of the complaint.

Respondent next raises a procedural objection to the admission of documentary evidence by the Hearing Board. The evidence to which respondent objects is composed of bank records pertaining to his nontrust accounts. Included in this evidence are records of deposit, checks written on accounts, notices of dishonor, and monthly statements.

Respondent argues that this evidence is inadmissible because he admitted in his amended answer virtually all of the Administrator's factual allegations. In essence, he contends that his factual admissions meant that no facts remained in dispute. He maintains, therefore, that the documents were irrelevant, immaterial, cumulative, and prejudicial, and that for these reasons the Hearing Board erred in admitting them.

The Administrator counters by arguing that respondent's admissions do not go to the ultimate factual issues of this case. According to the Administrator, respondent did not admit that he violated Rule 9—102(a) by failing to maintain a clients' trust account nor did he admit that he commingled and converted clients' funds. The Administrator points out that respondent's amended answer expressly denied these ultimate facts. Since respondent's amended answer placed at issue ultimate facts of the case, the Administrator maintains that the documents proffered were relevant and properly admitted to resolve the issues contested by the respondent.

This court has adopted Rule 401 of the Federal Rules of Evidence, which defines relevance. "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401; *People v. Monroe* (1977), 66 Ill. 2d 317, 322.

This definition, as noted in *Monroe*, encompasses the materiality of evidence as well as its probative value. (66

Ill. 2d 317, 322.) As applied to the record before us, it is clear that the documentary evidence proffered by the Administrator was both material and probative and, hence, admissible.

The evidence admitted plainly tends to make more probable than not the ultimate, but contested, issues of this case. For example, the documents tend to establish that respondent's several bank accounts were not in fact clients' trust accounts by showing the many transactions relating solely to respondent's personal and business activities. Therefore, the documents tend to establish as more probable than not that respondent, despite denial, violated the mandate of Rule 9—102(a) by not maintaining a trust account. These documents also tend to demonstrate that respondent, despite denial, commingled his funds with those of his clients as shown by the many checks written on these accounts for respondent's personal and business expenses. Further, these documents reveal the many times respondent's accounts, into which he deposited clients' settlement checks, showed negative balances, thereby tending to establish, as more probable than not, that respondent, despite denial, converted clients' funds. Respondent's contention that the documentary evidence was irrelevant is therefore without merit.

Respondent's further contention that admission of this evidence was prejudicial is also without merit. Respondent himself placed in issue facts which put the Administrator to his proof. By contesting the Administrator's allegations that he violated various provisions of the Code of Professional Responsibility, respondent cannot be heard to complain that evidence tending to prove the allegations was prejudicial. The Administrator has the right to adduce evidence tending to prove his case to the same extent that respondent has the right to introduce evidence tending to prove his defenses. We find no prejudice where, as here, the evidence introduced tends to resolve factual matters

in dispute. We hold that the Hearing Board properly admitted the documents proffered by the Administrator.

Respondent next contends that the Review Board violated his right to due process by basing its recommendation of disbarment on charges not contained in the Administrator's complaint. Respondent relies on *In re Ruffalo* (1968), 390 U.S. 544, 20 L. Ed. 2d 117, 88 S. Ct. 1222, for the proposition that an attorney cannot be disciplined on charges not contained in the original complaint against him.

Ruffalo is clearly distinguishable from respondent's situation. In *Ruffalo*, the sole basis for disbarment from the Federal bar was an additional charge added to the complaint after the attorney testified in his own behalf in an effort to refute the charges contained in the original complaint. The Supreme Court held that the attorney had been denied fair and adequate notice necessary to defend the new charge and that this lack of notice constituted a violation of due process. Unlike *Ruffalo*, respondent cannot allege that additional charges have been lodged against him such that he has been deprived of the fair and adequate notice needed to present a defense. The "charges" to which respondent alludes are not charges at all. They are illustrative of respondent's pattern and practice of commingling and conversion as charged in counts I and II of the Administrator's complaint. In challenging the actions of the Review Board, respondent is doing nothing more than attempting to label as new charges examples of transactions contained in the documentary evidence, properly admitted into the record, which support the allegations set out in counts I and II of the only complaint filed in this matter.

Our reading of counts I and II indicate that respondent was charged expressly with commingling and conversion with respect to each of six bank accounts controlled by respondent and named specifically by the Administrator.

While these two counts did not contain the names of individual clients whose funds were commingled and converted, these counts, as drafted, put respondent on notice of the nature of the charges against him and certainly were sufficient to permit him to prepare his defense. Notice sufficient to prepare a defense is precisely the due process requirement enunciated in *Ruffalo*. It has been satisfied in this case. Any additional specificity of the charges beyond that required by due process could have been secured by respondent through a request for a bill of particulars. We hold, therefore, that respondent was not denied due process.

The Administrator also charged respondent in each count of the complaint with conduct involving "dishonesty, fraud, deceit, or misrepresentation" in violation of Rule 1—102(a)(4) (87 Ill. 2d R. 1—102(a)(4)). These charges were grounded upon the same conduct which served as the basis for the charges that respondent failed to maintain a clients' trust account and that he commingled and converted clients' funds.

The Hearing Board did not reach the allegations of fraud and deceit. However, the Review Board considered them and concluded that respondent's pattern and practice of depositing and disbursing settlement proceeds from nontrust accounts was fraudulent within the meaning of Rule 1—102(a)(4).

Respondent takes exception to the Board's decision. Before this court, he denies that his conduct amounts to fraud and deceit. Alternatively, he argues that these charges were not proved by clear and convincing evidence. He notes that the Administrator produced no evidence of his intent to deceive or defraud, no evidence that any client was deceived, and no evidence that any client sustained financial or other loss.

Respondent's pattern and practice of depositing and disbursing clients' funds is premised on a basic deception.

Respondent routinely gave clients either current or post-dated checks in return for their endorsements on their settlement checks. Clients gave these endorsements in reliance upon respondent's representation that funds would be available to honor his checks upon presentation on the stated date. Respondent's representation constituted a clear inducement to clients to provide their endorsements on the settlement checks. Respondent actually led his clients to believe that their portion of their settlement proceeds would be available upon presentment of his check on the stated date. However, respondent's representations were false and deceptive each time he gave a check drawn on an account which he knew or should have known might be overdrawn at the time of presentment. Furthermore, until such time as a dishonored check was paid or replaced with cash, respondent's false representation caused a direct loss to the clients affected.

Respondent makes much of the fact that no client actually lost funds. By this, he apparently means that no client was deprived permanently of funds and, therefore, no client was harmed. In support of this claim, he stresses that the dishonored checks were either paid on re-presentment or replaced with cash or another check which was honored promptly upon presentment.

Respondent's distinction is without merit. Certain of respondent's clients were harmed at the time they presented his check and found it dishonored. All of respondent's clients were harmed by his pattern and practice of issuing checks which he knew or should have known might be dishonored. We cannot ignore this reality simply because, to date, the harm sustained has not proved to be permanent.

Respondent, in all settlement transactions, took possession of clients' funds on their belief, which he induced, that his checks were good because backed by settlement checks which they had endorsed over to him. On the basis

of this routine misrepresentation, respondent proceeded to deposit his clients' funds in one of several accounts utilized, in substantial part, to finance his personal and business affairs. He used these funds to pay for everything from utilities to gambling debts and allowances for himself and members of his family. In essence, respondent knowingly and under false pretenses obtained the short-term use of large sums of money belonging to clients to finance his personal and business activities. We are in agreement with the Review Board's conclusion that this conduct constituted fraud and deceit in violation of Rule 1—102(a)(4).

We turn now to a consideration of the appropriate sanction. We believe that a substantial sanction is warranted in this case. We are mindful, however, "that predictability and fairness require a degree of consistency in the selection of sanctions for similar types of misconduct." *In re Woldman* (1983), 98 Ill. 2d 248, 257.

The Review Board has recommended that respondent be disbarred. However, "[w]ithout *** minimiz[ing] the serious nature of respondent's misconduct, it can fairly be said that the instances in which this court has disbarred lawyers because of commingling and conversion have involved circumstances of a substantially more aggravated character than appear here." (*In re Kesler* (1982), 89 Ill. 2d 151, 162.) Thus, disbarment has been the sanction where attorneys have negotiated settlements without the knowledge or consent of clients, forged their clients' endorsements, and permanently converted the funds. (*In re Smith* (1979), 75 Ill. 2d 134, *cert. denied* (1979), 444 U.S. 841, 62 L. Ed. 2d 53, 100 S. Ct. 81; *In re Snitoff* (1972), 53 Ill. 2d 50, *cert. denied* (1973), 412 U.S. 906, 36 L. Ed. 2d 971, 93 S. Ct. 2292.) Also, disbarment has been the sanction where an attorney forged signatures in order to replace funds previously converted from one client with funds converted from another client. *In re Feldman* (1982), 89 Ill. 2d 7.

Respondent's misconduct, while constituting a serious breach of his professional and fiduciary obligations, is not of this character. While respondent clearly misused his clients' funds, the record before us indicates that the length of loss sustained by his clients varied from three days to two months. The length of loss sustained by Rooney, the client specifically named in count III, fell well within this two-month period. Further, Roll, the client specifically named in count IV, sustained no loss at all. Respondent's check to Roll was paid upon presentment. The record also reveals that the losses sustained by clients were cured by respondent upon receiving notification from those affected.

Thus, for the reasons stated herein, respondent is suspended from the practice of law for three years.

Respondent suspended.

APPENDIX B

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPINARY COMMISSION

In the Matter of	)	
	)	
BASIL CHRIS ELIAS,	)	Administrator's No.
	)	84 CH 43
Attorney No.	)	
00729523,	)	
	)	
Respondent.	)	

REPORT AND RECOMMENDATION
OF THE REVIEW BOARD

This matter comes before the Review Board on the Exceptions filed by the Administrator to the report and recommendation of the Hearing Board that the Respondent, Basil Chris Elias be reprimanded. Respondent was charged in a four count complaint with commingling and conversion of client funds along with conduct alleged to

involve fraud and deceit. This case was heard by the Review Board as an expedited matter pursuant to an Illinois Supreme Court order entered on February 3, 1986.

The Hearing Board's conclusions of fact and law stated that the Administrator had proved only two instances of failing to preserve the identity of client funds in 26 years. The Hearing Board considered each of the two instances as a technical breach of ethics but emphasized that in one instance the client received "prompt and fair adjustment", and in the other the client's check cleared despite the lack of funds in the attorney's account. The Hearing Board recommended that "Respondent be reprimanded . . . and admonished to comply strictly with the requirements of Rule 9-102 in the future."

The Exceptions raised by the Administrator alleged that the Hearing Board failed to consider proof of certain acts of misconduct. The Administrator maintains that evidence was presented showing that the Respondent consistently deposited client's settlement drafts into bank accounts in the names of others, allowed these bank accounts to be overdrawn on numerous occasions, failed to preserve the identity of client funds when deposited and regularly commingled and converted client funds.

All of the charges in the complaint grow out of Respondent's procedure for handling client settlement drafts. It was alleged that his procedures resulted in fraud and deceit, commingling and in some instances conversion. He was also charged with failing to maintain a separate and

identifiable client's trust bank account.

Basil Chris Elias, responded by filing an Answer which contained denials and admissions. Some of the admissions were made to the following specific allegations of the complaint:

COUNT I

A. i) On February 10, 1982 Respondent opened his account number 0009226-00 at the First State Bank of Alsip, Illinois

ii) Account Number 0009226-00 was entitled "Basil C. Elias Client's Funds Account";

vi) Respondent's Clients Funds Account Number 0009226-00 was overdrawn on several occasions during the period in which it as open;

vii) During the period the account was open Respondent disbursed money from account number 0009226-000 (sic) to parties . . . [other than clients which included large amounts to Las Vegas casinos and hotels]

B. i) On October 27,1981, account number 380-815-1 at the Harris Trust

and Savings Bank of Chicago was opened; [entitled the Prairie States Petroleum Co. Inc. Account]

iv) During the period in which the account was open, a multitude of insurance settlement proceed drafts relating to Respondent's law business were deposited into the account;

C. i) On July 11, 1979 Respondent opened [Basil C. Elias Attorney At Law Account at the Heritage Bank of Oak Lawn] . . . Account number 48-01112-6 . . . ;

v) During the period that the account has been opened a multitude of insurance settlement drafts relating to Respondent's law business have been deposited into it; and

vi) Account number 48-01112-6 has been overdrawn on numerous occasions since it opened.

D. i) At all times relevant to this complaint, Geraldine Keim was employed by Respondent as his bookkeeper and/or secretary. At no time was Keim licensed to practice law in Illinois.

ii) On August 30, 1977, Account number 701-511-7 at the Bank of Commerce & Industry in Chicago was opened;

iii) Account number 701-511-7 was entitled the "Geraldine Keim Client's Fund Account";

iv) Respondent and Geraldine Keim were the only authorized signatories [sic] on the account;

vi) During the period in which the account was open, settlement proceed drafts relating to Respondent's law business were deposited into it;

vii) Account number 701-511-7 was overdrawn on numerous occasions during the period it was open.

E. ii) On September 21, 1979 Account Number 803-712-803 at the Bank of Commerce and Industry was opened;

iii) Account number 8803-712-3 was entitled the "Kenneth R. LeVey and Basil C. Elias Attorney at Law Account";

vi) During the period in which the account was open, settlement proceed drafts relating to Respondent's law business were deposited into it;

vii) Account Number 803-712-3 was overdrawn on numerous occasions during the period it was open.

COUNT II

In Count Two of the complaint Respondent also admitted every allegation except the paragraph defining the alleged resulting unethical conduct. Count Two alleged that Respondent opened a Jospeh N. Lascaro Attorney at Law Account; that Lascaro was an associate in Respondent's law office; that the account was opened in the Bank of Commerce & Industry in Chicago on September 1, 1981, under account number 901-726-3; the signature card for the account was not signed by Lascaro; Respondent at all times had control of the account and permitted or directed Geraldinge Keim to sign the name of Joseph Lascaro on checks on the account; clients' settlement proceed drafts were deposited into the account; the account was used to pay Respondent's personal and

business expenses and it became overdrawn on numerous occasions; the account remained open and active six months after Lascaro left Respondent's office.

COUNT III

Respondent also admitted in his Amended Answer the following allegations regarding Mary K. Rooney. Mary K. Rooney was Respondent's client in a personal injury claim which resulted in a settlement draft being endorsed by her on March 23, 1982. She was given her share of the proceeds with a post dated check drawn on the "Basil C. Elias", account number 48-0112-6, at the Heritage Bank of Oak Lawn. The settlement draft from Montgomery Ward Insurance Company No. B-49218 was deposited in the First State Bank of Alsip into the, "Basil C. Elias Client's Funds Account". The account became

overdrawn. The Rooney check drawn on the Heritage Bank did not clear because of insufficient funds.

COUNT IV

In Count Four the Respondent admitted that a settlement draft payable to Fred O. Roll, Hilda Roll and Basil C. Elias was deposited into the "Geraldine Keim Client's Fund Account".

Careful review of the bank records taken in connection with the Respondent's admissions, in each of these counts suggest that the Administrator's Exceptions have considerable merit.

From 1979 until 1983, the period covered by the Administrator's investigation, Respondent made it a standard practice to deposit client settlement drafts into a variety of bank accounts under a variety of

names. The accounts in question are:

Basil C. Elias, Attorney at Law Account - Heritage Bank of Oak Lawn (hereinafter Elias Business Account)

Basil C. Elias, Attorney at Law Clients Fund Account - Heritage Bank of Oak Lawn (hereinafter Elias Client Account)

Basil C. Elias, Client Fund Account - First State Bank of Alsip

Geraldine Keim Client's Fund Account - Bank of Commerce & Industry (hereinafter Keim Account)

Joseph N. Lascaro Attorney at Law Account - Bank of Commerce & Industry (hereinafter Lascaro Account)

Kenneth R. LeVey/Basil Elias Account - Bank of Commerce & Industry (hereinafter the LeVey Account)

Prarie State Petroleum Co. Inc. Account - Harris Trust & Savings Bank (hereinafter Prarie State Account).

A review of the record suggests the Kenneth R. LeVey Client Fund account at the Bank Leumi in Chicago, Illinois, Ex. 44 (iii), was involved in the transaction of client settlement proceeds.

Substantial documentary evidence relating to some of these accounts was admitted into evidence. The documents include monthly bank statements, checks written on, and different checks deposited into the Elias Client Fund Account, First State Bank of Alsip, the Lascaro account, and the Prairie State account. The deposit and withdrawal checks on the two Basil C. Elias accounts at the Heritage Bank of Oak Lawn, the Kenneth R. LeVey/Basil Elias Bank of Commerce & Industry account and the Keim Clients Fund account at the Bank of Commerce & Industry do not appear to be part of the documentary evidence. Although the Respondent testified that he issued settlement distribution sheets covering cash distributions, none but the one covering the Mary K. Rooney transaction were found in the exhibits. The

Rooney transaction involved a distribution by check.

The Lascaro account was opened for twelve months. During that time it was overdrawn on 29 different days. It was not identified as a trust account. The following is an example of how transactions in this account were handled.

An $800.00 settlement draft, Ex. 67(c), from Standard Mutual Insurance Company dated Sept. 30, 1981 payable to Lynn Agate and Jack F. Marino, her attorney was endorsed and deposited into the Lascaro account on or about November 5, 1981. Client distribution check #1035, Ex. 68(bb), dated 11-4-81 which is drawn on the Lascaro account payable to Lynn Agate in the amount of $476.00 was dishonored by the bank for "non sufficient funds" when presented for payment on

November 9, 1981. The check was re-presented on November 19, 1981 and paid.

An Allstate settlement draft, Ex. 69(g), in the amount of $823. 25 dated November 25, 1981 payable to Thomas J. McNulty and his Atty. Joseph N. Lascaro was endorsed and deposited into the Lascaro account on or about December 9,1981. Client distribution check #1066, Ex. 70(x), dated December 8, 1981 drawn on the Lascaro account payable to Thomas McNulty inn the amount of $550.84 was dishonored by the bank for "non sufficient funds" on December 10, 1981. The client distribution check was re-presented on December 15, 1981 and paid.

The $490.50 Allstate settlement draft, Ex. 69(b) dated October 20, 1981 payable to Virgil Mosby and his attorney Joseph H. Lascaro was endorsed and deposited into the

Lascaro account on or about November 13, 1981. Client distribution check #1038, Ex. 70(d) which is dated November 10, 1981, drawn on the Lascaro account, payable to Virgil Mosby in the amount of $327.00, is shown on the bank statement to be a returned item (returned unpaid to a party presenting it for collection). A second client distribution check, Ex. 84(g), #1257 dated June 16, 1982, drawn on the Lascaro account, payable to Virgil Mosby in the amount of $327.00, was issued and paid.

The State Farm Insurance settlement draft, Ex. 75(b), in the amount of $6,500.00 dated January 18, 1982 payable to Thomas Molyneak and Jack F. Marino & Julius Palegimas, his attorneys was endorsed and deposited into the Lascaro account some time in February of 1982. Ex. 5(j) which is

client distribution check #10509 dated February 20, 1982 drawn on the Basil C. Elias Client Fund Account, Alsip Bank, payable to Thomas Olyneak in the amount of $4,333.34 appears to have paid the client his portion from an entirely different bank account.

Check #1196 dated April 13, 1982, Ex. 80(e) drawn on the Lascaro account was made payable to Peter Bernoi, Jr. in the amount of $481.27. It was dishonored by the bank on April 16, 1982. On April 19, 1982 the check was re-presented and paid. An insurance settlement draft covering this transaction was not found.

Check #1214 dated May, 1982, Ex. 80(f) drawn on the Lascaro account was made payable to Kevin Chambulain in the amount of $3,114.34. It was dishonored for "non

sufficient funds" on May 10, 1982 and represented and paid on May 14, 1982. An insurance settlement draft covering this transaction was not found.

Check #1229 dated May 18, 1982, Ex. 82(k), payable to Cornelius L. Sciath in the amount of $1,876.67 on the Lascaro account was dishonored for uncollected funds on May 21, 1982 and paid on June 1, 1982. An insurance settlement draft covering this transaction was not found.

Check #1222 dated May 18, 1982, Ex. 82(d) payable to John Veliotes in the amount of $2,129.88 drawn on the Lascaro account was dishonored on May 19, 1982 due to uncollected funds and paid on June 1, 1982. An insurance settlement draft covering this transaction was not found.

Check #1280 dated August 3, 1982, Ex.

86(q) in the amount of $1,117.32 payable to Charles Worman was dishonored on August 11, 1982. Check #1281 dated August 10, 1982, Ex. 86(r) in the amount of $1,117.33 payable to Charles Worman was paid on August 10, 1982. Check #1280 was dishonored a second time on August 24, 1982. Both checks were drawn on the Lascaro account and there was not any insurance settlement draft found covering either transaction.

The Basil C. Elias Client Fund Account, First State Bank of Alsip, was open for a period of 71 days. It was overdrawn on four occasions resulting in over $40,000.00 in checks being returned as insufficient funds or uncollected. More than $56,000.00 was paid out of the account to various Las Vegas gambling casinos. The following is an example of how transactions involving checks

to clients were handled in that account.

An Allstate settlement draft, Ex. 6(b), in the amount of $2,100.00 dated March 15, 1982 payable to George Jackson and Joseph Lascaro, his attorney, was endorsed and deposited in the Basil C. Elias Client Fund Account, First State Bank of Alsip. A client distribution check, Ex. 78(c), payable to George Jackson, #1179, dated March 15, 1982 was issued on the Lascaro account. (NOTE: The client distribution check is drawn on a different bank.)

An Allstate settlement draft, Ex. 6(c), in the amount of $2,000.00 dated February 16, 1982 payable to Larry and Liza Cooper and their attorney Joseph Lascaro was deposited into the Basil C. Elias Client Fund Account, First State Bank of Alsip. A client distribution check payable to Larry

and Liza Cooper, #1178, Ex. 78(b), dated March 12, 1982 was issued on the Lascaro account in the amount of $1333.34. (NOTE: The client distribution check is drawn on a different bank.)

An Allstate settlement draft, Ex. 6(d), in the amount of $1,800.00 dated March 5, 1982 payable to Eris Williams and Joseph Lascaro was deposited into the Basil C. Elias Client Fund Account, First State Bank of Alsip. A client distribution check payable to Eris Williams, #1180, Ex. 78(d), was drawn on the Lascaro account in the amount of $612.50. (NOTE: The client distribution check is drawn on a different bank.)

A Continental Insurance Co. settlement draft, Ex. 6(aa) in the amount of $552.00 payable to Henry Dixon and his attorney Joseph Lascaro was deposited into the Basil

C. Elias Client Fund Account, First State Bank of Alsip. A client distribution check, Ex. 78(j), payable to Henry Dixon, #1186 was drawn on the Lascaro account in the amount of $368.00. (NOTE: The client distribution check is drawn on a different bank.)

The Basil C. Elias Client Fund Account, First State Bank of Alsip, with its many variations in handling insurance settlements for clients, produces a view somwhat like Alice In Wonderland. The more one looks, things become "curiouser and curiouser". An example is the signature card, Ex. 1(a). The birth date on the card is "B.D. 12-25-53". Contrast that with the first paragraph of the complaint which states that Basil C. Elias was admitted to the practice of law on May 21, 1959. The notation on the signature card suggests he was only six years old when

admitted to practice.

The Prairie State account was opened in October of 1981 as a non-law related business account. A substantial number of client's settlement drafts were collected through the account. The following is an example of how client settlement check transactions in this account were handled.

A settlement draft from Carriers Insurance Company, Ex. 29(p), payable to Janet and George Bringe and Attorney Joseph Lascaro was deposited into the Prarie State Account. A check, Ex. 74(z), drawn on the Lascaro account payable to George Bringe dated January 28, 1982 in the amount of $7,611.67 was dishonored by the bank on February 1, 1982. On February 5, 1982 it was re-presented and paid.

An Allstate settlement draft, Ex.

29(r), payable to James & Carol Harris and their attorney Joseph Lascaro was deposited into the Prairie State account. A client distribution check, Ex. 74(aa), payable to James Harris, Carol Harris, #1122, dated January 22, 1982 was drawn on the Lascaro account. (NOTE: Another use of two banks.)

A State Farm Insurance settlement draft, Ex. 29(t), payable to Virginia Tyberg and Joseph Lascaro in the amount of $4,000.00 dated May 8, 1981 was deposited into the Prairie State account on January 20, 1982. A client distribution check, Ex. 74(rr), payable to Virginia Tyberg, #1151, dated January 28, 1982 was drawn on the Lascaro account. There are at least 30 other exhibits which disclose settlement drafts being deposited into the Prarie State account and apparent distribution checks to

checks to the client being made from the Lascaro account. In addition thereto, innumerable settlement drafts were deposited into the Prairie State petroleum account but could not be matched with disbursement checks from any other exhibits of checks entered into evidence.

A State Farm Insurance settlement draft, Ex. 31(a), payable to Nancy Marcotte and Jospeh Lascaro in the amount of $20,000.00 dated January 28, 1982 was endorsed and deposited into the Prairie State account. A client distribution check, Ex. 76(1) payable to Nancy Marcotte, #1157 dated February 22, 1982 was drawn on the Lascaro account. It was paid by the bank on February 24, 1982 which caused the account to be almost $2,000.00 overdrawn.

A Reliance settlement draft, Ex. 38(cc)

payable to Nancy Marcotte and her attorney, Joseph N. Lascaro was endorsed and deposited into the Prarie State acount on June 12, 1982, a client distribution check, Ex. 84(c), #1253 dated July 12, 1982, drawn on the Lascaro account was presented and dishonored on July 8,1982. Check #1253, Ex. 84(c), was again presented for payment on July 14, 1982 and was paid which caused the Lascaro account to be almost $5,000.00 overdrawn. Ex. 64(1).

A State Farm Insurance settlement draft, Ex. 31(p), dated February 11, 1982, payable to Kenneth A. Greczyk and Basil Elias, Jopseph N. Lascaro and Jack Levin, his attorneys, in the amount of $50,000 was endorsed and deposited into the Prarie State account on February 22, 1982. A client distribution check payable to Kenneth A.

Greczyk, #10507, dated February 12, 1982 in the amount of $2,000.00 was drawn on the Basil C. Elias Client Fund account, First State Bank of Alsip.

An Aetna Insurance Company settlement draft, Ex. 33(11) payable to David Hart and Virlee Hart and their attorney, Joseph N. Lascaro dated March 24, 1982 in the amount of $3,100.00 was deposited into the Prairie State account on March 31, 1982. A client distribution check, Ex. 80(c) payable to Daniel Hart, #1190, dated April 9, 1982 in the amount of $1,639.17 was issued on the Lascaro account. That check was dishonored by the bank on April 13, 1982 and again on April 9, 1982 in the amount of $597.50 drawn on the Lascaro account was issued to Virlee Hart.

A State Farm Insurance settlement draft, Ex. 34(c), payable to Steven Virgo

and Jack Marino, his attorney and Swedish Covenant Hospital dated March 15, 1982 in the amount of $2,788.10 was endorsed and deposited into the Prairie State account on April 20, 1982. On April 20, 1982, check #10602, Ex. 34 (cc) was issued on the Basil C. Elias Client Fund Account, First State Bank of Alsip payable to Steven B. Virgo in the amount of $25,000 bearing the endorsement of "Steve B. Virgo" and was deposited into the Praire State account. On May 7, 1982, Check #316 issued on the Prairie State account dated May 7, 1982 payable to Steven Virgo in the amount of $9,500.00 was endorsed and deposited into the Prairie State account, ex. 37(k). Evidence of an insurance settlement draft to cover these transactions could not be found in the exhibits.

An Allstate settlement draft, Ex. 34(bb), payable to Vaughn Coldman in the amount of $3000.00 was endorsed and deposited into the Prarie State account on April 21, 1982. A client distribution check payable to Vaughn Coldman, #1207, Ex. 80(p), issued on the Lascaro acount dated April 24, 1982 in the amount of $1,163.28 was returned for "non sufficient funds" and was not paid until re-presented on May 4, 1982.

An Allstate settlement draft, Ex. 34(mm), in the amount of $2,000.00 payable to Michael Schmidt and his attorney Joseph Lascaro was deposited into the Praire State account on April 26, 1982. A client distribution check, Ex. 82(j) payable to Michael Schmitd (sic), #1228, was issued on the Lascaro account dated May 18, 1982 in the amount of $1,333.34 and was returned "non

"non sufficient funds", Ex. 64(j), on May 23, 1982. It was paid when re-presented on May 28, 1982.

A Metropolitan Property and Liability Insurance Company settlement draft, Ex. 40(aaa), payable to Rufus Smith and his attorneys Jospeh H. Lascaro, Jack Marino and Dr. Gene Kolenda in the amount of $4,800.00 was endorsed and deposited in the Prairie State account on July 30, 1982. A client distribution check, Ex. 86(o), payable to Rufus Smith, #1276, was issued on the Lascaro account in the amount of $2,525.20 on August 13, 1982 and was dishonored due to "uncollected funds". A second client distribution check, Ex. 88(i), payable to Rufus Smith, #1292 was issued on the Lascaro account for $2,535.20 and was paid.

An Aetna insurance settlement draft,

Ex. 42(jj), dated August 10, 1982 payable to Antonio Cherry and Atty. Kenneth R. LeVey in the amount of $25,000.00 was endorsed and deposited into the Prairie State account on August 16, 1982. On September 26, 1982, client distribution check Number 2597, Ex. 44(iii), issued on the Kenneth R. Levey, Attorney At Law, Clients Fund account at Bank Leumi, dated September 1, 1982, payable to Antonio Cherry was endorsed and also deposited in the Prairie State acount. The LeVey check was dishonored by Bank Leumi due to "non sufficient funds", Ex. 46(ll), but paid when re-presented on October 26, 1982.

An Allstate settlement draft, Ex. 44(j), dated August 30, 1982 payable to Robert & Anna Gallegos and their attorney Joseph N. Lascaro in the amount of $5,200.00 was deposited into the Prairie State account

on September 20, 1982. Client distribution check #1306, Ex. 88(s) was issued on the Lascaro account dated September 9, 1982 in the amount of $3,440.67 payable to Robert Gallegos. This check was dishonored on September 13, 1982 based on uncollected funds and again on September 16, 1983 for "non sufficient funds" ex. 64(m) and 64(n). A second client distribution check, Ex. 45(u) was issued on the Prairie State account, Check #428, dated September 20, 1982 payable to Robert Gallegos in the amount of $3,440.67 and that check cleared.

A Farmer's Insurance Group settlement draft, Ex. 46(f), payable to Percry Jones and his Atty. K. LeVey, in the amount of $19,500.00 was deposited into the Prairie State account on October 5, 1982. Client distribution check #7831, Ex. 46(g),

drawn on the same bank, dated October 5, 1982 payable to Percry Jones in the amount of $2,000.00 is the only evidence of any distribution of settlement proceeds regarding this substantial settlement.

Basil Chris Elias, was admitted to practice law in Illinois on May 21, 1959,. During the period covered by these proceedings from 1977 to 1983, his primary legal practice involved personal injury claims. The volume of his practice was exceptional. Although most of his claims for clients were in the $5,000.00 to $10,000.00 range, during one eleven month period he grossed in excess of $3,500,000.00.

Respondent's bank records and testimony present the veiw of a complex entangled web of financial dealings at first blush. However, this view is quickly dispelled after a

thorough examination.

The exhibits establish that Respondent developed a pattern of dealing with settlement transactions. On some occasions he would receive a settlement draft from an insurance company and deposit it in one of five bank accounts. Although the names on two of those accounts carried the words "Client's Fund Account", those words had little or no influence over the manner in which those accounts were used. On the one hand, the Basil C. Elias Clients Fund Account at the First State Bank of Alsip did receive clients' funds. But on the other hand, some of the proceeds in the account were used to make a variety of Basil C. Elias' personal financial payments. During one period, $61,000.00 was paid to Las Vegas hotels and casinos. Other payments were made

to other attorneys and political entities.

The Geraldine Keim Client's Fund Account at the Bank of Commerce and Industry, opened at the behest of Respondent, was in the name of a non lawyer. This highly irregular act by Respondent grew out of his desire to prevent the bank from knowing that he had an interest in the account. He said he owed the bank several hundred thousand dollars (Tr. 112-113). Client settlement drafts were deposited in the account. The account was frequently overdrawn.

The name, "Prairie State Petroleum Company Incorporated Account" at the Harris Trust & Savings Bank would ordinarily cause one to believe it to be the last account into which client funds would be deposited. However, numerous settlement checks were deposited in the account. On several occasions the client's distributive share of

the settlement would be drawn on an entirely different bank account to the Prairie State Petroleum account where the insurance settlement draft was deposited.

Respondent's position has been that the acts complained of are not a violation of the disciplinary rules. Respondent's position is that there was not any fraud or deceit involved and that with the exception of Mary Rooney (who was promptly made whole), no client was harmed.

Part of Respondent's position is based on his personal definition of what is and is not client funds. Elias maintains that when the settlement drafts were received by his office, the client would be called in, a "transaction sheet" completed showing the disbursement to be made, and the client would immediately receive his portion of the settlement. The client would either receive

cash, a current dated check or a post dated check. Respondent claims that since the client then had received his funds, the entire settlement draft belonged to the Respondent, to do with as he pleased.

We must determine if this interpretation comports with the purpose and intent of Supreme Court Rule 9-102 regarding preserving the identity of client funds. Rule 9-102 reads in pertinent part:

> (a) All funds of clients paid to a lawyer or law firm, including funds belonging in part to a client and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more separate identifiable trust accounts in a bank or savings and loan association maintained in the State in which the law office is situated.

Section (c) of the same rule provides in pertinent part:

> A lawyer shall
>
> (3) maintain complete records of all funds, securities and other

> properties coming into the possession of the lawyer and appropriate accounts to his client regarding them; and
>
> (4) promptly pay or deliver to the client, as requested by the client, the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive. (Emphasis added)

It is clear that until the client has received actual value, either in the form of cash, certified check or by having an uncertified check clear the client's account, for his portion of any settlement draft, the funds represented by that draft must be maintained in a trust account. That account must be separate from any other account of the lawyer and used only for client trust account purposes. The funds received on behalf of clients must be readily identifiable to the client throughout the collection process.

In the instances where Respondent alleges that he immediately gave cash to the client for his portion of the settlement draft, the clients interest in the draft would have ordinarily been extinguished. This procedure would be similar to any other cash transaction. Thus, in such a case, the Respondent contends that he could deposit the insurance settlement drafts into any account over which he had control without any regard for a client's trust account. Upon payment of cash to the client for the check, he says, he could do whatever he chose with that check.

A strict interpretation of Rule 9-102 would disallow this procedure. The language in the rule is quite explicit: "all funds of clients paid to a lawyer or law firm... shall be deposited in one or more separate

identifiable trust accounts in a bank..." The reason for the rule is readily apparent. The practice of cash distributions is fraught with possibilities for fraud and deceit both on the part of the attorney and of the client. A large percentage of the cases reaching the disciplinary system involve misuse of client funds by erring attorneys.

If all settlement disbursements are made by check there would exist an independent record of the transaction through the bank files. Attorney's (sic) wanting to accomodate clients by immediately cashing out the client's portion of a check could do so by issuing a check to a client, having it endorsed and then exchanging it for cash. The verification of the transaction of the transaction available through the checking records would protect the attorney from

unwarranted claims of funds withheld and provide the client an independent source from which to verify a transaction.

Although the cash payments to clients in exchange for the entire settlement draft is an important issue which we believe the Court will address in due time, we contend that its resolution is not necessarily dispositive of this case.

Respondent next argues that when he issued the client a current dated check or a post dated check, the client's interest in the settlement draft was extinguished. This position is untenable. Any portion of a client's settlement that is tendered in the form of an uncertified check is not delivered until that check is honored by the issuing bank. Until honored, a check represents only a promise to pay and not

payment. The client's interest in the settlement draft continues until actual value is received. The client's interest is not extinguished by merely handing him a check either current or post dated. All manner of risk is heaped upon the client when a settlement distribution check is drawn upon funds in a general purpose account. Rule 9-102 was designed to help eliminate these risks.

In the instant case, Respondent has not supported his claim of cash payments with any receipts signed by clients or the "transaction sheets" he alleges were made. Further, Respondent's contention that the majority of the settlements were distributed in cash is supported only by self serving testimony at the hearing. It should be noted that the totality of the exhibits

detail a multitude of disbursements by check.

The bank records directly contradict the position of Respondent that in his 26 years of practice only one client, Mary K. Rooney was disadvantaged by his methods. Instead, there are numerous instances where clients' distribution checks were presented twice in order to effectuate a disbursement. We do not know if those clients incurred bank charges or had checks they had written returned because the check given by the Respondent failed to clear on the first presentment. The exhibits also detail several instances where the client's disbursement check was presented and dishonored twice and a replacement check was issued by the Respondent.

Respondent, by depositing the

settlement drafts into accounts other than the one from which the client's check was written deceived the client. The clients accepted checks drawn on what was held out to be a "trust" account. The clients did not know that the account was being used for the personal and business obligations of the Respondent. Nor did the clients know that their checks were not being backed by their settlement drafts. If a client, whose check was dishonored had attempted to assert his claim against the original settlement draft, chances are he would have been unable to do so. The draft was very likely hidden from him, often in an account that did not bear the name of Respondent.

By depositing client's settlement drafts into accounts that were not true trust accounts, Respondent placed the

clients at risk. The non-trust bank accounts are subject to liens from creditors, to garnishments by others and to levies by the U.S. Departement (sic) of Internal Revenue. Supreme Court Rule 9-102 specifies a trust account for the protection of a client's funds from these types of risks.

Black's Law Dictionary defines fraud as,

> An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right.

In the case of Johnson V. McDonald, 170 Okl. 117, 39 P.2d 150, the court discussed fraud. It was described as:

> A generic term, embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by spression (sic) of truth

> and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.

By these standards Respondent's fraud is readily disernable (sic). When Respondent gave a client a check and dated that check, he was representing to that client, the funds would be available to the client on that day. In reliance on this representation, that Respondent's check was good, the client would endorse the check and leave it with the Respondent. However, either by his refusal to maintain records on his accounts or the inability to meet his obligations, Respondent defrauded those clients whose checks did not clear when presented for the first time.

We believe that in each instance where an insurance company's settlement draft was deposited into an account that was not a

trust account used solely for client funds, a commingling took place. If the Respondent had purchased the draft with cash from the client, prior to depositing the check, although undesirable as a practice, the procedure could hardly be classified as commingling. Respondent, under those circumstances, however had the burden of producing evidence that the alleged cash transactions took place.

Respondent did engage in conduct involving fraud and deceit. He admits that the Keim account was established to deceive the Bank of Commerce & Industry about his true interest. The establishment of the Lascaro account and the continued use of the account after Lascaro left Respondent's office is clearly deceitful conduct. Lascaro left Respondent's office in March of

1982. However, settlement drafts not endorsed by Lascaro were deposited into accounts under Respondent's control for months afterward. Certainly when Lascaro's name was endorsed on the back of a settlement draft by Respondent or by Keim at Respondent's direction, it was intended to deceive the insurance company and cause them to rely on the signature to be that of Attorney Lascaro and pay the draft.

We believe that in each instance where checks were issued to clients but not honored by the bank, that a coversion (sic) took place. The fact that the checks subsequently cleared is viewed as a mitigating factor but does not excuse the initial conversion.

In Re Feldman, 89 Ill.2d 7, 431 N.E.2d 388 (1982), the attorney was disbarred for

converting estate funds of two clients. The court noted that the conduct involved was not an isolated incident. As shown by a careful ananysis of the exhibits, Basil C. Elias like Feldman, "manifested a pattern of behavior which clearly tends to bring the legal profession into disrepute." (431 N.E.2d 388, 390).

The court has emphatically and unequivocally condemned the commingling of clients' funds with the attorneys' own. (See, In re Clayter, 78 Ill.2d 276, 399 N.E.2d 1318 (1980); In re Brody, 65 Ill.2d 152, 357 N.E.2d 498 (1976); In re Schlax, 81 Ill.2d 66, 405 N.E.2d 778 (1980))

It has pointed out the various dangers associated with commingling. It is often the first step towards conversion. In the event of a lawyer's death or insolvency, the

client as rightful owner may end up as a general creditor. The explanations of "poor bookkeeping," failure to fully understand the duty" and "no dishonest motive" are completely unaceptable (sic) excuses for commingling, In re Clayter, supra.

In the dissenting opinion of Mr. Justice Moran in In re Grant, 89 Ill.2d 247, 433 N.E.2d 247, 433 N.E.2d 259 (1982), urging disbarrment rather than the two year suspension entered by the majority, Justice Moran quoted, In re Stillo, 68 Ill.2d 49, 368 N.E.2d 897 (1977),

> "When a lawyer * * * converts a client's funds to his own personal use, he commits an act involving moral turpitude, and in the absence of mitigating circumstances, such conversion is a gross violation of the attorney's oath, calling for disbarrment." (sic)

There is much more involved in the manner in which Basil C. Elias handled client settlement funds than technical commingling and technical conversions. The Respondent's testimony regarding his current indebtedness and the inferences raised by the large number of checks paid to gambling establishments, creates the impression that he is living outside the edge of his income. He admitted owing more than $200,000.00 to gambling casinos and several hundreds of thousands of dollars to the Bank of Commerce & Industry of Chicago. This manner of living has probably contributed to Respondent's method of handling client trust funds in such a manner that they would yield maximum benefit to Respondent and untold detriment and risk of loss to the clients.

The magnitude of Respondent's conduct

requires drastic measures to discourage similar conduct in the profession by other would be manipulators. It would appear that the Oklahoma court, in Johnson v. McDonald, supra., which characterized fraud as a generic term, "embracing all multifarious means which human ingenuity can devise...", was obviously speaking of people like this Respondent.

The recommendation of the Hearing Board that Respondent be reprimanded is hereby reversed.

The recommendation of the Review Board regarding Basil Chris Elias can be aptly expressed by adopting the words of Mr. Justice Ward in the case of In re Snitoff, 53 Ill.2d 50, 280 N.E.2d 428 (1972) wherein he wrote:

> We consider that to protect the public interest, secure the integrity of the profession and to redress the

affront to the administration of justice, the respondent's name should be stricken from the roll of attorneys.

Accordingly, we recommend that Basil Chris Elias be disbarred.

Respectfully submitted,

Chester L. Blair, Chairman
Herbert J. Bell
Michel A. Coccia
C. William Fechtig
Watts C. Johnson
Richard L. Kahn
John Cadwalder Menk
Martin L. Silverman

Marshall Alan Susler did not participate.

This case was decided on February 14, 1986.

APPENDIX C

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPINARY COMMISSION

In the Matter of	)	
	)	
BASIL CHRIS ELIAS,	)	Administrator's No.
	)	84 CH 43
Attorney No.	)	
00729523,	)	
	)	
Respondent.	)	

REPORT AND RECOMMENDATION
OF HEARING PANEL

The above entitled cause was heard January 28, 1985 and April 11, 1985 at the office of the Attorney Registration and Disciplinary Commission, Chicago, Illinois, before a hearing panel composed of Roy I. Peregrine, Juan M. Mendez and Jerome Rotenberg, Chairman. The Administrator was represented by James J. Grogan, Karia W.

Katakis and Bridget Armstrong, and the Respondent by William J. Harte and David J. Walker.

PLEADINGS

COMPLAINT

The Complaint is in four counts. Count One alleges that Respondent opened five separate bank accounts either in his name or in the name of others, that client settlement proceeds were deposited into the accounts where they were commingled with Respondent's own funds and were used for Respondent's personal or business benefit; that Respondent converted client's funds; and allowed those various bank accounts to be consistently overdrawn. Specific transactions are alleged in each of the five accounts to show commingling of funds and overdrafts.

Count Two complains that Respondent opened an account at the Bank of Commerce and Industry in the name of "Joseph N. Lascaro, Attorney at Law Account." However, Joseph N. Lascaro, a law associate of Respodent, never made any deposits or withdrawals to the account. Instead the account was used for Respondent's business and personal benefit even after Lascaro left Respondent's office. The account was allegedly overdrawn on numerous occasions.

The Administrator alleges in Count III that Respondent collected $3,500 on behalf of a client, Mary Rooney. She endorsed the check to Respondent and he returned a check to her for $1,883.69 drawn on Basil C. Alias, Attorney at Law Account at Heritage Bank of Oak Lawn. Mary Rooney deposited that check at her bank, but it was returned for insufficient funds, as Respondent's

account was overdrawn during this period. Respondent then paid Mary Rooney $1,921 in cash.

Count Four alleges that Respondent deposited a settlement check in the amount of $3,000 on the case of another client, Donald Ryan. Futher that the account in which this amount was deposited became overdrawn prior to disbursement of the $3,000.

ANSWER

Respondent admitted having various bank accounts at different banks upon which withdrawals were made for personal purposes and which were overdrawn from time to time as alleged in the Complaint. However, he denies commingling clients' funds with his own, using clients' funds for personal or business benefit or converting client's funds.

Respondent essentially admits all of the allegations of Count Two regarding the use of the "Joseph N. Lascaro, Attorney at Law Account" for personal purposes, but denies any commingling or conversion of clients funds in that account or other unethical conduct.

As to Count Three, Respondent admits giving his client, Mary Rooney, a check for $1,883.69 that "bounced" but denies that that involved any unethical conduct.

Again, Respondent admits all the allegations of Count Four (permitting an overdraft in a client's fund account) but denies any unethical conduct on his part.

FINDINGS OF FACT

Respondent, BASIL C. ELIAS, was licensed to practice law in Illinois on May 21, 1959. He is a sole practitioner, specializing in tort claims, with offices in

he Chicago Loop, on the South Side of Chicago and in Oak Park. His clients are personal injury claimants, most of whom come from low income groups. The settlements on most claims range between five and ten thousand dollars.

Respondent maintained several bank accounts, under a variety of names at different banks. One of these accounts was at the Bank of Commerce and Industry entitled the "Joseph N. Lascaro, Attorney at Law Account". Lascaro had an office association with Respondent from 1978 to 1982. He gave Respondent authority to open the account but he, Lascaro, never had authority to conduct any transactions in it.

Settlement checks from insurance companies were deposited by Respondent in all of the various accounts. Withdrawals were made by Respondent for personal purposes

from all of the accounts. Each of the accounts, from time to time, was overdrawn.

When Respondent received a check in settlement of a claim he would contact his client and request him to come to the office. Thereupon, the client would endorse the settlement check to Respondent and would receive a "distribution sheet" showing a deduction for costs and fees. At the same time the client would receive his full net recovery either in cash or by check.

In one instance a check from Respondent to a client, Mary Rooney, "bounced", because there was insufficient funds in the account upon which it was drawn. Upon notification, Respondent promptly delivered $1,921 in cash ($37.31 more than the N.S.F. check) to Ms. Rooney.

In another instance one of Respondent's accounts was overdrawn while a check upon it

to a client, Donald Ryan, was yet unpaid.

CONCLUSIONS OF FACT AND LAW

Respondent contends that he cannot be guilty of commingling or conversion of clients' funds, because he never retained any clients' funds on hand. Just as soon as a settlement check was endorsed by a client for deposit, Respondent made distribution to the client by cash or check. Technically, there would be a breach of ethics any time the balance in Respondent's bank account or accounts fell below the sum of all outstanding checks to clients. Remarkably, the Administrator only alleged and proved that this happened in two instances during Respondent's 26 years of practice. In one, prompt and fair adjustment was made to the client. In the other, we assume that the client's check cleared as there is no

allegation that it was returned for insufficient funds.

These two instances demonstrate that Respondent failed to preserve the identity of funds contrary to Rule 9-102 of the Code of Professional Responsibility.

RECOMMENDATION

We recommend that Respondent be reprimanded for his failure to comply with Rule 9-102, Preserving Identity of Funds and Property of a Client, and that he be admonished to comply strictly with the requirements of Fule 9-102 in the future.

/s/JEROME ROTENBERG, Chairman

/s/JUAN M. MENDEZ

/s/ROY I. PEREGRINE

APPENDIX D

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

December 1, 1986

Mr. William J. Harte
Attorney at Law
111 W. Washington St., S#1100
Chicago, IL 60602

No. 63238 - In re: Basil Chris Elias.
Disciplinary Commission.

The Supreme Court today DENIED the petition for rehearing in the above entitled cause.

The mandate of this Court will issue to the appropriate Appellate Court and/or Circuit Court or other agency on December 11, 1986.

No. 86-1173

Supreme Court, U.S.
FILED
FEB 6 1987
JOSEPH F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1986

In the Matter of:

BASIL CHRIS ELIAS,

Petitioner.

v.

ILLINIOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION of the Supreme Court of Illinois

Respondent.

BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

JAMES J. GROGAN
203 North Wabash Avenue
Suite 1900
Chicago, Illinois 60601
Telephone: (312) 346-0690
Attorney for Respondent,
Attorney Registration and
Disciplinary Commission

Pandick Technologies, Inc., Chicago • (312) 236-0200

10

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES CITED	ii
STATEMENT OF CASE	1
REASONS FOR DENYING THE WRIT	3
I. PETITIONER'S DUE PROCESS GUARANTEES WERE NOT VIOLATED IN THE ATTORNEY DISCIPLINARY PROCEEDINGS BROUGHT AGAINST HIM.	3
A. The Supreme Court of Illinois considered and correctly determined that he had sufficient notice of the charges to prepare his defense;	3
B. Documents admitted into evidence supported the allegations of the Complaint	4
II. THE SUPREME COURT OF ILINOIS DECISION IS IN ACCORD WITH RELEVANT UNITED STATES SUPREME COURT CASES	5
III. QUESTIONS OF THE SUFFICIENCY OF EVIDENCE ARE NOT REVIEWABLE BY THE SUPREME COURT	6

TABLE OF AUTHORITIES

	Page
Ex Parte Bradley, 74 U.S. (7 Wall.) 364 (1868) . .	5
Ex Parte Robinson, 86 U.S. (19 Wall.) 505 (1873)	5
In re Elias, 114 I11.2d 321, (1986)	4
In re Ruffalo, 390 U.S. 544 (1968)	3, 4, 5
Randall v. Brigham, 74 U.S. (7 Wall.) 523 (1868)	5
Thompson v. City of Louisville, 362 U.S. 199 (1960)	6

No. 86-1173

In The
Supreme Court of the United States
October Term, 1986

In the Matter of:

BASIL CHRIS ELIAS,

Petitioner.

v.

ILLINIOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION of the Supreme Court of Illinois

Respondent.

BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

STATEMENT OF CASE

On April 17, 1984, the Administrator of the Attorney Registration and Disciplinary Commission (Commission) filed a four count complaint against Petitioner, who was licensed to practice law in Illinois in 1959, charging him with professional misconduct. After the filing of his answer, a hearing was held.

On January 24, 1986, the Commission Hearing Board found that Petitioner had violated the Illinois Code of Professional Responsibility and recommended that he be reprimanded. Subsequently, the matter was considered by the Commission Review Board which determined that Petitioner should be disbarred. The matter then was heard by the Supreme Court of Illinois.

On October 1, 1986, the Supreme Court of Illinois entered its opinion suspending Petitioner for three years based on the misconduct charged in the complaint.

REASONS FOR DENYING THE WRIT

I. PETITIONER'S DUE PROCESS GUARANTEES WERE NOT VIOLATED IN THE ATTORNEY DISCIPLINARY PROCEEDINGS BROUGHT AGAINST HIM.

A. The Supreme Court of Illinois correctly determined that he had sufficient notice of the charges to prepare his defense.

In 1984, Petitioner was charged with a history of failing to deposit client settlement proceeds into trust accounts as required by the Illinois Code Professional Responsibility.

Specifically, Count One of the complaint charged that Petitioner opened five separate bank accounts, commingled client settlement proceeds with Petitioner's own funds, converted client funds, and allowed the bank accounts to be consistently overdrawn. Count Two alleged that Petitioner opened a bank account in the name of an associate, deposited client settlement proceeds into it, used the money for business and personal expenses, and allowed the account to be consistently overdrawn. As to both counts, Petitioner was informed of the precise rules of the Code of Professional Responsibility he violated.

Petitioner filed an answer to the charges and raised certain defenses. There was a hearing on the merits of the charges. After a complete review of the record, the Supreme Court of Illinois determined that Petitioner had engaged in a pattern of commingling and conversion in order to finance his personal and business activities. The court based its decision on the voluminous evidence of misconduct introduced at hearing. Thousands of documents, most of which were Petitioner's bank records, were admitted over his relevancy objections.

Petitioner claims his due process guarantees were violated and relies on *In re Ruffalo*, 390 U.S. 544 (1968). In support of this proposition, he claims that the Supreme

Court of Illinois made certain findings against him which were not the subject of the original complaint filed against him and thus deprived him of notice and opportunity to be heard on those matters.

As noted by the Supreme Court of Illinois, Petitioner's reliance on *Ruffalo* is misplaced.

> *Ruffalo* is clearly distinguishable from Petitioner's situation. In *Ruffalo*, the sole basis for disbarment from the Federal bar was an additional charge added to the complaint after the attorney testified in his own behalf in an effort to refute the charges contained in the original complaint. The Supreme Court held that the attorney had been denied fair and adequate notice necessary to defend the new charge and that this lack of notice constituted a violation of due process. Unlike *Ruffalo*, respondent cannot allege that additional charges have been lodged against him such that he has been deprived of the fair and adequate notice needed to present a defense. The "charges" to which respondent alludes are not charges at all. They are illustrative of respondents pattern and practice of commingling and conversion as charged in counts I and II of the Administrator's complaint. In challenging the actions of the Review Board, Petitioner is doing nothing more than attempting to label as new charges examples of transactions contained in the documentary evidence, properly admitted into the record, which support the allegations set out in counts I and II of the only complaint filed in this matter.

In re Elias, 114 See.2d 321, 336 (1986).

B. Documents admitted into evidence supported the allegations of the complaint.

The documents referred to by Petitioner throughout his Petition for a writ of certiorari do not stand as additional charges against him, but simply as evidence to support the alleged misconduct. Counts One and Two of the

complaint outline a pattern of wrongdoing. To demonstrate that such a pattern existed, it was necessary to introduce into evidence bank documents which supported the charges. As a result, Petitioner's own records were introduced into evidence. The Illinois Supreme Court was thus correct in holding that the documents were examples of transactions which clearly and convincingly established allegations of commingling and conversion. As noted by the court, if Petitioner sought additional specificity of the charges beyond that required by due process, it should have been secured by him through a request for a bill of particulars.

II. THE SUPREME COURT OF ILLINOIS DECISION IS IN ACCORD WITH RELEVANT UNITED STATES SUPREME COURT CASES.

In attorney disciplinary proceedings, this Court has consistently held that lawyers must be allowed notice and an opportunity to be heard. In *Ex Parte Bradley*, 74 U.S. (7 Wall.) 364 (1868), an attorney was accused of contempt of court. The Court held that a disbarment order entered against him was a violation of due process because the attorney had no notice or opportunity for defense. In that same year, the Court decided *Randall v. Brigham*, 74 U.S. (7 Wall.) 523 (1868). The Court held that formal allegations against the lawyer were not necessary, but due process again required notice and an opportunity for defense. In *Ex Parte Robinson*, 86 U.S. (19 Wall.) 505 (1873) the Court required notice and opportunity for explanation and defense. In one of the most recent disciplinary cases, *In re Ruffalo*, 390 U.S. 544 (1968), the Court pointed out that notice is required so the attorney may prepare a defense. The charge must be known before the proceedings commence. Otherwise, the proceedings become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start anew. *Ruffalo*, 390 U.S. at 551.

The Illinois Supreme Court held that the notice Petitioner received was sufficient to prepare his defense. He was permitted an opportunity to be heard. Thus, the analysis and holding follows the decisions of this Court.

III. QUESTIONS OF THE SUFFICIENCY OF EVIDENCE ARE NOT REVIEWABLE BY THE SUPREME COURT.

In *Thompson v. City of Louisville*, 362 U.S. 199 (1960), the Court stated that questions of the sufficiency of evidence will not be reviewed. A decision to review the merits of a case does not rely on the sufficiency of the evidence but on whether this conviction rests upon any evidence at all. *See e.g.*, *Thompson*, 362 U.S. at 199.

Petitioner's argument regarding the reliability of documents is a question of the sufficiency of evidence. Over one thousand exhibits were admitted, including evidence that, on over 800 occasions, Petitioner had overdrawn client trust accounts. Clearly this is not an issue of whether there is any evidence at all. Therefore, Petitioner's issue regarding the evidence is not an appropriate issue for review.

CONCLUSION

For the reasons set out above, Respondents respectfully submit the Petition for Writ of Certiorari be denied.

Respectfully submitted,

JAMES J. GROGAN
203 North Wabash Avenue
Suite 1900
Chicago, Illinois 60601
Telephone: (312) 346-0690
Attorney for Respondent,
Attorney Registration and
Disciplinary Commission